

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-080309
	:	TRIAL NO. B-0609326
Respondent-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
IMMANUEL DUBOSE,	:	
Petitioner-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Petitioner-appellant, Immanuel Dubose, appeals the Hamilton County Common Pleas Court's judgment denying his R.C. 2953.21 petition for postconviction relief. We affirm the court's judgment.

Dubose was convicted upon jury verdicts finding him guilty of murder and having a weapon under a disability. We affirmed his convictions in his direct appeal.² He also challenged his convictions in a postconviction petition. The common pleas court denied his petition, and this appeal followed.

We address together, and overrule, Dubose's three assignments of error upon our determination that the common pleas court properly denied his postconviction petition without an evidentiary hearing.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² See *State v. Dubose*, 1st Dist. No. C-070397, 2008-Ohio-4983.

In his petition, Dubose contended that he had been denied the effective assistance of counsel because his trial counsel had declined to call witnesses to provide exculpatory testimony and to refute incriminating testimony provided at trial by the state's witnesses. This claim presented matters that depended for their resolution upon evidence outside the record. Thus, the claim was not, as the common pleas court concluded, barred under the doctrine of res judicata.³

In support of his claim, Dubose offered the substance of the proposed witnesses' testimony through his own affidavit. But the self-serving declarations contained in that affidavit were insufficient to compel a hearing on his claim.⁴ And Dubose failed to demonstrate a reasonable probability that, but for defense counsel's failure to present the proposed witnesses, the result of his trial would have been different.⁵

Because Dubose failed to support his postconviction claim with evidentiary material setting forth sufficient operative facts to demonstrate substantive grounds for relief, the common pleas court properly denied his postconviction petition.⁶ Accordingly, we affirm the court's judgment.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., PAINTER and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 26, 2008

per order of the Court _____.
Presiding Judge

³ See *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104, paragraph nine of the syllabus.

⁴ See *State v. Kapper* (1983), 5 Ohio St.3d 36, 37-38, 448 N.E.2d 823; *State v. Combs* (1994), 100 Ohio App.3d 90, 98, 652 N.E.2d 205.

⁵ See *Strickland v. Washington* (1984), 466 U.S. 668, 694, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373.

⁶ See R.C. 2953.21(C); *State v. Pankey* (1981), 68 Ohio St.2d 58, 428 N.E.2d 413; *State v. Jackson* (1980), 64 Ohio St.2d 107, 413 N.E.2d 819.